

## Attachment A

### SPECIFICATIONS AND PROCEDURES FOR REAL ESTATE LEGAL SERVICES CONTRACT

1. Contracted Services. The Contractor must provide the following services upon written request by the Office of the County Attorney (the "County Attorney").
  - a. Title Opinion Report.
    - (1) Content and Time. The Contractor must submit a report that gives the Contractor's opinion as to the title and describes the status of title to the property, including any and all encumbrances, and must include a certification that the title is clear and marketable\* and, if not, an explanation of the reasons why it is not. The report by the Contractor (not the abstractor's notes), must be received by the County Attorney within 30 days of the request. The County Attorney reserves the right to request that the Contractor provide a certified title opinion report in less than 30 days from the date of the request. In the event a shorter turnaround is requested, the Contractor is not obligated to accept the assignment. However, once accepted, the shortened deadline must be met by the Contractor.
    - (2) Attachments. The Contractor's report must be accompanied by copies of the deed to the current owner, current mortgages, deeds of trust, liens, and any other recorded documents which indicate a party of interest in or encumbrance against the land, unless the County Attorney advises that it has previously obtained such document(s).
  - b. Settlement.
    - (1) Time.
      - A. Completion. Settlement must be completed as set forth in the contract with the seller (normally 90 days from ratification of the contract), unless title is not clear and marketable\* or the delays are caused by the seller, the seller's lienholder(s), or other parties of interest in the land being acquired by the County.
      - B. Delays. The Contractor is responsible for keeping the County Attorney informed on a monthly basis of the status of the settlement, the reasons for any delays and the efforts being taken to resolve the issues causing any delays. The Contractor is responsible for delays by the abstractor.
    - (2) Completeness. The Contractor is responsible for all aspects of settlement, including: title search and report; preparation of all documents, including releases as needed; settlement; transfer and recordation; 1099 forms; and returning recorded documents to the County Attorney, seller and other parties, as appropriate.

\*"Marketable" means the title is marketable and insurable at regular rates.

- (3) Payment. The Contractor is required to maintain an escrow account. Checks from the County will be issued to the Contractor's escrow account for distribution of funds at settlement. On occasion, the County will issue checks in the name(s) of the party(ies) receiving proceeds.
  - (4) Title Insurance. The Contractor is required to maintain an affiliation with a title company qualified to do business in Maryland and provide title insurance at the County Attorney's request.
- c. UCC Filings. The Contractor must at the County Attorney's request conduct Uniform Commercial Code Security filing searches including the recording of UCC 1 forms among the records of the State Department of Assessments and Taxation and in the Circuit Court for Montgomery County. The costs of these Uniform Commercial Code searches and filings will be charged as part of the closing costs of the loan and will be the Contractor's responsibility to provide the County Attorney with a binding cost quote for the services prior to undertaking them so that appropriate sums can be deducted from the Economic Development loans for payment of the searches and filings.

## 2. Schedule.

- a. Contract Term. The term of this Contract is for two years, beginning on the date the County Attorney signs this Contract. The County Attorney and the Contractor may extend the term of this Contract by mutual agreement for up to four (4) additional two-year terms, contingent upon and subject to satisfactory and timely performance by the Contractor, as determined by the County Attorney, and fiscal appropriations.
- b. Price Increases. Prices quoted are firm for a period of two years after execution of this Contract. The Contractor may request a price adjustment after this two-year period. However, any request for a price adjustment is subject to the following:
  - 1. It must be approved by the County Attorney or designee;
  - 2. It must be submitted in writing to the County Attorney or designee and must be accompanied by supporting documentation justifying the Contractor's request. A request for any price adjustment will not be approved unless the Contractor submits to the County Attorney sufficient justification to support that the Contractor's request is reasonable and is based on its net increase in costs in delivering the goods and services required under this Contract;
  - 3. It must be submitted sixty (60) days prior to the contract expiration date if the contract is being amended;
  - 4. The County Attorney will approve only one price adjustment for each contract term, if a price adjustment is approved;
  - 5. It should be effective sixty (60) days from the date of receipt of the Contractor's request; and
  - 6. It must be effectuated by a written contract amendment executed by the County Attorney and the Contractor.
- c. Assignments. Work will be assigned on a rotating basis among all Contractors providing real estate legal services to the Office of the County Attorney, with an effort toward distribution of assignments balanced in volume and complexity. Work assignments, however, are in the sole discretion of the County Attorney and the County Attorney may take into account factors including, but not limited to, past performance of the Contractor,

experience of the Contractor, and responsiveness of the Contractor to County assignments when making work assignments. The County does not guarantee any minimal level of work assignments.

- d. Re-Assignments. Work may be re-assigned to another Contractor at the County Attorney's discretion, at which time the County shall have no further obligation or liability to Contractor, but will make payment to the Contractor for assigned work timely and satisfactorily completed by the Contractor, as determined by the County Attorney to the date of re-assignment.
3. Conflicts. The Contractor must not accept any assignments from the County if the Contractor is involved in litigation against the County or is representing the interests of a party against the County. The Contractor must not accept representation of a client in a matter against the County while a real estate assignment is pending. In addition, the Contractor is subject to the following:
- a. Contractor states that it is familiar with and will comply with the terms and conditions of Chapter 11B and Chapter 19A of the Montgomery County Code.

- b. Contractor certifies that it does not know of any facts concerning this Contract and the services to be performed which constitute a conflict of interest under the Maryland Lawyers' Rules of Professional Conduct. Contractor's client is the Montgomery County Government and its instrumentalities.
  - c. It is important that Contractor be independent and impartial in order to properly conduct its services to the County. Contractor must not act as counsel in any lawsuit or other adversary proceeding in which the County is named as an adverse party or in which Contractor takes an adverse position to the County.
  - d. Contractor, however, may represent a client if that representation is not in conflict with the requirements of Chapters 11B and 19A of the Montgomery County Code and any other applicable ethics laws.
  - e. The County's conflict of interest policy is more restrictive than the Rules of Professional Conduct governing attorney conduct and the County Attorney, in his/her sole discretion, has the final authority to determine whether a conflict exists.
4. Settlement Procedures. The Contractor must comply with the procedures established by the County Attorney, attached hereto, incorporated by reference herein and made a part of this Contract, as "Steps to Settlement for Property being Acquired by Montgomery County" (Exhibit 1, and as may be altered by the County over the term of this Contract).
5. Fee Arrangements.
- a. No title insurance. The County Attorney's cover letter forwarded with each assignment will include a maximum fee amount per settlement, to be determined. For the purpose of this Contract, the maximum fee amount stated in the cover letter directing Contractor to proceed is incorporated by reference into and made a part of this Contract. Payment for services rendered over and above the maximum stated in the County Attorney's cover letter will not be paid unless prior written authorization is received from the County Attorney, following an identification by the Contractor of:
    - (1) the problems or additional work anticipated; and
    - (2) an itemization of the estimated time anticipated for the additional work.
  - b. Title insurance. On a case-by-case basis the County may purchase title insurance. In the event title insurance is purchased, the County may require the Contractor to offset the title commission amount the Contractor receives through the issuance of the title policy against the fee the County owes Contractor when the consideration is \$2,000,000.00 or more.
  - c. Charges to sellers. Except as authorized by the contract between the seller and the County, there are to be no attorney's fees charged to the sellers, including charges for preparation of and recording of releases of the sellers' current mortgage(s).
  - d. Time increments. All fees must be based on increments not exceeding 1/10th of an hour.
  - e. Rates. The rate billed will be \$250.00 per hour for the work performed by the Contractor responsible under this Contract. The rate will be \$125.00 per hour for the work

performed by a party in the capacities of paralegal, legal assistant, law clerk, or similar position of assistance to the Contractor. In the event of a complicated assignment, as determined by the County Attorney, the rate may be increased at the option and sole discretion of the County Attorney.

- f. Minimum Charges. There are no standard minimum charges for any services performed, such as telephone calls, document preparation, etc. Only the actual time expended may be charged at the rate stated in this Contract.

6. Billing.

- a. Detail. All bills must reflect separate entries and include details as to the nature of the service performed, the person performing the service, and the time attributable to each entry.
- b. Summary. At the end of each bill, there must be a summary of the total time expended, with the billing rate, and a breakdown of any other approved costs with reasonable detail, as applicable. The County's cost reimbursement policy is outlined in Paragraph 8 below.
- c. Form. Separate bills must be presented for each property. Each bill must indicate the name of the property owner (seller) and the name and number of the project. Charges for attorneys' fees and abstractor costs are not to be included on the settlement sheet.

7. Schedule of Fee Payments. Statements for Professional Services must show a detailed itemization of services performed, as set forth in Paragraph 6 above. Statements must be submitted:

- a. When the title report is delivered to the County Attorney and after settlement has occurred, or
- b. Monthly, when settlement is delayed more than 90 days.

The abstractor's bill must accompany the statement for services when the title report is delivered to the County Attorney.

8. Cost Reimbursement.

- a. Abstractor's Charges. The County will only reimburse the Contractor for abstractor's charges when a statement from the abstractor is provided. Abstractor's charges must not exceed the following amounts unless prior written authorization is received from the the County Attorney:

Lot and Block	\$175.00
Acreage	\$250.00
Commercial Property	the amount stated in the County Attorney's cover letter forwarded with the assignment

For purposes of this Contract, the not to exceed amount stated in the County Attorney's cover letter is incorporated by reference into and made a part of this Contract.

The County will not reimburse the Contractor for abstractor charges for an amount exceeding that established by the County Attorney when the work is assigned without the prior written approval of the County Attorney.

b. Additional Charges.

1. If Contractor receives an assignment in time for normal turnaround service (30 days) but, due to the Contractor's delay, the abstractor considers it a "rush," the Contractor will be responsible for any additional charges.
2. In the event the County Attorney requests a title report or settlement within a shortened time period that may result in additional charges, the Contractor must advise the County Attorney in advance of the additional charges and the County Attorney has the option of using another abstractor or Contractor for that assignment. Without prior notice to and approval by the County Attorney, the Contractor will be responsible for the additional charges.

c. Courthouse Copies. Duplication costs for title searches are not charged by the Circuit Court for work performed under a contract with the County, and the County therefore will not reimburse for duplication costs assessed by the Circuit Court. The Contractor must provide the abstractor with the County's "gratis request letter", which the County Attorney will provide to the Contractor. The abstractor must present this letter to Land Records in order for the abstractor to receive copies without cost.

d. Costs of Doing Business. No separate charges shall be billed to the County for word processing, telephone, clerical or secretarial services, photocopying expenses, or overtime of Contractor's personnel.

e. Certificate of Good Standing. The County will reimburse the Contractor for the cost of obtaining a Certificate of Good Standing.

f. Couriers, Express Mail, Photocopies and Facsimiles. As a matter of general policy, the County will not pay for the use of outside couriers, overnight delivery services and other forms of delivery. It is recognized that on an occasional basis such services must be used, such as circumstances necessary to meet mortgage payoff deadlines or for a new

purchase by the seller. However, hand-delivery and overnight delivery is not to be used as a matter of routine. The County will be responsible for these charges only when written approval is obtained by the Contractor from the the County Attorney in advance. The Contractor shall be reimbursed for photocopying expenses only in unusual circumstances and only with the prior approval of the County Attorney. Under no circumstances may the County be charged for facsimile transmissions.

9. Administrative Issues.

- a. General Conditions. The attached General Conditions of Contract Between County & Contractor (hereinafter "General Conditions") are incorporated by reference herein and made a part of the Contract. The Contractor must comply with the provisions of the General Conditions.
- b. Contractor must notify the County Attorney immediately if the license to practice law in the State of Maryland of the attorney assigned by the Contractor to be responsible for work assignments has been suspended or revoked.
- c. In addition to the provisions stated in Paragraphs 21 of the General Conditions, Contractor must notify the County Attorney immediately, and the County Attorney may then terminate the Contract in its sole discretion, with no further liability or obligation, if there are any changes with respect to:
  - (1) the title insurance company with whom the Contractor is authorized to write title insurance;
  - (2) the Contractor's professional liability coverage and limits; and/or
  - (3) the Contractor's maintenance of an Attorney/Client Escrow Account.